

TESTIMONY

OF

THE HONORABLE JAMES P. FOX
DISTRICT ATTORNEY
SAN MATEO COUNTY, CALIFORNIA

AND

PRESIDENT
NATIONAL DISTRICT ATTORNEYS ASSOCIATION

BEFORE A HEARING OF THE

SUBCOMMITTEE ON CRIME, TERRORISM AND
HOMELAND SECURITY

ON

H.R. 3546 TO AUTHORIZE THE EDWARD BYRNE
MEMORIAL JUSTICE ASSISTANCE GRANTS
PROGRAM AT FISCAL YEAR 2006 LEVELS
THROUGH 2012

MAY 20, 2008

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INTRODUCTION

Chairman Scott, Ranking Member Gohmert and Members of the Subcommittee:

My name is James P. Fox and I am the elected district attorney in San Mateo County, California and have served in this capacity for approximately twenty-six years.

I have been involved in the criminal justice system for forty-one years in a variety of positions including juvenile probation, deputy district attorney, criminal defense attorney and elected district attorney in 1982. I am a past President of the California District Attorneys Association and have been a chairman of the Legislative Committee of the California District Attorneys Association since 1990.

I would like to extend my sincere thanks to the Subcommittee for the invitation to testify today. I appreciate the opportunity to share my thoughts and concerns as well as those of my colleagues regarding the successes of the Byrne-JAG program and the probable consequences of continued reductions in program funding.

Currently I serve as the President of the National District Attorneys Association

(NDAA). NDAA is the largest and primary professional association of prosecuting attorneys in the United States. Formed in 1950 as the “National Association of County and Prosecuting Attorneys” and given its present name in 1959, NDAA has approximately 7,000 members, including most of the nation’s local prosecutors, in addition to, assistant prosecutors, investigators, victim witness advocates and paralegals. The National District Attorneys Association provides professional guidance and support to its members, serves as a resource and education center, follows public policy issues involving criminal justice and law enforcement, and produces a number of publications.

As a representative of the nation’s prosecutors and other criminal justice professionals, I am here today to discuss the detrimental impact of reductions to Byrne-JAG funding and to urge this subcommittee to do what is necessary to make certain that the program is authorized at the FY 2006 level (\$1.095 billion) through Fiscal Year 2012. The FY08 omnibus appropriations bill cut the Byrne Justice Assistance Grant (Byrne/JAG) program by 67%, from \$520 million in FY07 to \$170 million in FY08.

The Byrne-JAG program is the only comprehensive federal program to combat criminal activity with an intergovernmental and interstate approach, allowing for increased effectiveness in the responsiveness of the criminal justice system to the development of proactive approaches to interstate and multi-jurisdictional crime. It allows for a true system-wide approach, enabling communities to target resources to their most pressing local needs. It has been particularly critical for the prosecutorial community. Prosecutors across the nation rely on this funding for the training of prosecutors and law enforcement personnel; the dedication of prosecutors to task forces and investigation teams; the development and implementation of crime prevention

programs and the creation of innovative programs to reduce recidivism rates. In fact, the Byrne-JAG program is in many instances the *only* source of funding to support critical multi-jurisdictional task forces and multidisciplinary teams.

If funding for the Byrne-JAG program remains at the reduced FY08 level, prosecutors across the country will lose vital training, investigative tools, personnel and physical resources, the ability to effectively collaborate with other jurisdictions, states and levels of government, and the ability to engage in successful crime prevention efforts.

**IMPACT OF CONTINUED FUNDING REDUCTIONS IN THE EDWARD
BYRNE MEMORIAL JUSTICE ASSISTANCE GRANTS**

CALIFORNIA

In my home state of California continued reductions to the Byrne Justice Assistance Grants program will have a devastating impact on the investigation and prosecution of drug trafficking and various other crimes. A survey of county-specific programs illustrates the importance of this federal funding.

Stanislaus County

The Stanislaus County Drug Enforcement Agency has been an active, successful anti-drug abuse (ADA) task force in existence for more than 34 years. They operate under a supportive Governing Board comprised of all the law enforcement leaders in the community and have participation from every city agency in the county, along with the Sheriff's Department, District Attorney's Office, and Probation Department. As a result of this support and commitment to a safer community through drug suppression efforts,

the Stanislaus task force has remained operational despite numerous reductions in grant funding over the past several years.

During the past five years the county has experienced fluctuations in OES Byrne Grant (JAG funding) with decreases in excess of 50%. These reductions resulted in the loss of critical investigator positions on the task force. Further loss of personnel will have a negative impact on operations and could limit the task force's ability to conduct some large-scale investigations. These investigations are a critical component in successfully investigating and identifying DTO's (Drug Trafficking Organizations). This will jeopardize the Stanislaus ADA's success in controlling and eliminating the major drug trafficking organizations responsible for the methamphetamine epidemic throughout Stanislaus County and across the nation.

This essential funding has contributed to recent successes of the anti drug abuse task forces. Early this month after a comprehensive investigation and weeks of surveillance, a methamphetamine super lab was located. Approximately 200 gallons of methamphetamine in solution with an estimated street value of over four million dollars were seized, in addition to firearms. Over the past six months the ADA has arrested several associates of a well known multi-generational drug trafficking organization.

In order for the Stanislaus ADA Enforcement Program to continue operating at the same level of sophistication and success, it is essential that the Byrne Grant program be funded at adequate levels. It is a constant challenge to conduct investigations, which maintain a higher level of sophistication/intelligence than that of the drug trafficking organizations. With a decrease in funding, resulting in a reduction of personnel, the county's investigative abilities will be diminished.

Santa Barbara County

Santa Barbara County has for many years used these funds as the primary funding source for a county-wide narcotics task force. This unit is staffed by officers from law enforcement agencies in the various jurisdictions. Their mission is to target the major offenders, and work in a united effort to benefit the county as a whole. It has been quite successful in the past, but with the decreases in funding the entire program may be in jeopardy. This task force along with other agencies was responsible for implementing the DEC, or drug endangered children, program that has served to focus on the children victims of drug trafficking and abuse. If the funds are further decreased Santa Barbara County may have to eliminate the work of the entire task force. Historically, disbanded task forces are found to be extremely difficult to reassemble in the future when funding is increased.

Santa Clara County

Santa Clara County has two multi-jurisdictional investigative task forces funded with Byrne-JAG grants: the Unified Narcotic Enforcement Team (**UNET**) and the Santa Clara County Specialized Enforcement Team (**SCCSET**). Nearly every law enforcement agency in Santa Clara and San Benito Counties has law enforcement agents assigned to one of these units. A major crimes regional task force, the South Bay METRO, also operates in both these counties and others, including San Mateo County. The work of these tasks forces and teams significantly reduces the amount of illegal drugs on the county's streets and aids in the capture of regional and local drug traffickers.

These task forces have been doing an excellent job and for smaller local agencies it is the only way they can receive the quality assistance they need in order to make major

drug busts. They facilitate the transfer of information across and between local, state and federal jurisdictions and the sharing of best practices among the participating agencies. Between January 2007 and February 2008, the task forces have seized 15 ½ pounds of methamphetamine with a street value of over \$750,000.00, 5 ½ pounds of cocaine (\$199,000.00), ½ pound of tar heroin (\$20,000.00) and 318 dosage units of MDMA (Ecstasy at 10 to 15 dollars per tablet). At least six of these investigations had direct ties to organized crime groups, such as Nuestra Familia, South Vietnamese Gangsters and MS-13. SCCSET also initiated a murder for hire investigation, which resulted in an arrest and conviction of the perpetrator and prevented a homicide.

If Byrne-JAG funds are reduced, it is estimated that these task forces will be cut by a minimum of 67% severely crippling their ability to effectively operate. Law enforcement cannot conduct investigations without funding. The local agencies do not have the manpower or the resources to tackle these problems on their own. The collaborative work must continue and this will in turn reduce the amount of drugs on our streets.

San Bernardino County

In San Bernardino County the Byrne/JAG funds are used to offset designated Street Enforcement and Marijuana Suppression deputy district attorneys. Continued reductions in the Byrne-JAG funding will require that the department's budget de-fund other positions.

Ventura County

Ventura County is fast becoming a supply and distribution point of narcotics for much of the state, as well as the western region (i.e., Oregon, Washington, and Nevada).

During this past year the Ventura County Combined Agency Team (VCAT) noticed an increase in outside agencies conducting narcotic investigations that have led them directly to Ventura County. There have been several occasions where agencies from Los Angeles (LA Impact), Orange County (RSNP), San Bernardino (IRNET), San Diego (Southwest Border HIDTA), and even San Jose (DEA) have contacted investigators in order to advise them that their investigations have ties to Ventura County. Many of these investigations have resulted in the arrests of members belonging to Drug Trafficking Organizations (DTOs), the seizures of narcotics, and the forfeiture of proceeds from these DTOs. Many of the Ventura County investigations have led investigators out of Ventura County and back to these same jurisdictions, i.e., Los Angeles, Orange and San Bernardino counties. In addition, investigations originating in Ventura County have led investigators directly to the source of supply in Baja California (Tijuana) and as far north as the state of Washington.

VCATs primary goal has always been to reduce the impact of illicit drugs within Ventura County. Using a multi-jurisdictional collaborative approach (i.e., VCAT Task Force) has resulted in a great deal of success. For example, within the last few months VCAT has seized over 50 pounds of methamphetamine, 20 kilos of cocaine, 130 pounds of tar heroin, and hundreds of thousands of dollars in narcotic proceeds.

Continued reductions in Byrne JAG funding, coupled with previous years reductions, would significantly impact the county's ability to carry out the types of investigations that are currently being conducting. The expectant result of a reduction in funding would not only impact the narcotic task force and local law enforcement agencies, but more importantly, would no doubt create a concomitant effect resulting in

an increase of drugs and crime in communities, counties, states and nation.

Cuts to the funding such as that which occurred in FY 2008 could potentially shut down the task force in Ventura County. At the very least, in order to save any investigative positions all ancillary expenses would need to be eliminated. This would include such things as training, equipment purchases, investigative costs, administrative costs, e.g., office space, copy machines, telephones, etc. In addition, severe cuts would need to be made to overtime, which would impact the quality and outcome of investigations.

With respect to the elimination of training and equipment, the loss of funding in each of these areas would have a catastrophic effect on the task force. Training is used to enhance investigators' knowledge, skills, and abilities. Training provides a source of networking where investigators often meet and discuss the latest DTO trends, case law, threats, and the newest types of surveillance equipment necessary to stay current in the field. Many of the investigations involve the use of cutting edge technology in order to keep pace with the drug trafficking organizations. Without adequate funding and training the task force could not initiate the types of investigations currently being conducted, but instead would be relegated to working street drugs, which has a minimal, if any impact at all on drug trafficking organizations.

Alameda County

In Alameda County the funds from the Byrne JAG program pay for all expenses (with the exception of police salaries) for the Alameda County Narcotics Task Force. In addition, the funding covers the costs associated with dedicating a prosecutor to the task force. Without this funding the District Attorney, due to staffing concerns, would be unable to assign a prosecutor to the task force. If the reductions continue the task force

may have to be disbanded. This is the only unit in Alameda County that focuses on midlevel and upper level narcotics traffickers. In *Yuba County* a prosecutor is also dedicated to the narcotics task force and is in a similar situation as Byrne JAG funds are reduced.

II. ALABAMA

4th Judicial Circuit

Alabama's 4th Judicial Circuit Drug Task Force is funded by the Byrne-JAG program. The 4th Judicial Circuit covers the largest geographical area of any other circuit in the State of Alabama. The total project cost for FY 2008 is currently set at \$306,113.45. The state has requested \$153,056.72 in Byrne-JAG funds to support this task force.

The Drug Task Force has made a tremendous impact on the drug trade in Alabama's 4th Circuit. The number of violent crimes related to drug activity is down substantially. This is attributed to the focus by law enforcement on the leaders of the narcotics community, the increased quality of investigative skills and improved case preparation. Prosecutors in the state have learned through various reliable and confidential informants that individuals in the narcotics trade fear the abilities of the Task Force to operate and make quality cases that send drug dealers to the state and federal penitentiaries for long periods of time.

The 4th Circuit of Alabama would be adversely affected if the Drug Task Force is eliminated, and without Byrne-JAG assistance, this program would go without sufficient funding, ultimately requiring dissolution of the task force. Drug dealers will return to operating openly, without the fear of being apprehended.

III. ARIZONA

In Arizona, the Arizona Criminal Justice Commission allocates Byrne-JAG funding according to a statewide strategy that also incorporates state and local dollars to maximize the use of public dollars to combat drugs, gangs and violent crime. Together these funds financed 16 narcotics task forces; 15 tandem prosecution programs; funding to courts to correspond with the increased caseload; funding to the state and municipal crime labs to assist with lab work for drug analysis and other related costs; and funding for criminal history records improvement projects. These programs resulted in the seizure of more than 350,000 pounds of illicit drugs; the discovery and dismantling of 16 methamphetamine labs; and the arrest of 5,220 drug offenders.

Due to cuts in Byrne-JAG funding, Arizona's state-funded programs expect to see a decrease from \$5.6 million in FY07 to an estimated \$1.7 million in FY08.

Additionally, the state of Arizona is in fiscal crisis as the state legislature is trying to counter a \$1 billion shortfall in revenue. Subsequently, state dollars distributed with Byrne/JAG funds under a state-wide strategic plan are at risk of being swept into the general fund by the legislature, further crippling the state's enhanced drug and gang enforcement program. In *Pima County, AZ*, budget cuts to the Byrne-JAG Grants directly translate to personnel cuts representing one full time attorney position and one team in the narcotics unit comprised of two attorney positions, one paralegal position and one legal secretary position. The current level of staffing is inadequate with attorneys carrying unacceptably high case loads. Further reductions in staffing levels will result in

increases in attorney caseloads and a negative impact on the time required to dispose of felony cases.

The U.S. DEA has recognized Arizona as one of the most active drug trafficking corridors in the United States. Given the reduction of the Byrne and JAG funding over the past four years, the Byrne and JAG programs will be reduced to the point of no longer offering effective support. The loss of Byrne funding would result in dismantling of several rural task forces, leaving tens of thousands of miles without coordinated narcotics intervention efforts. Given Arizona's unwanted role as a major trafficking corridor for narcotics smuggled from international origins, the loss of these task forces have implications nationally, not just for Arizona.

IV. HAWAII

Honolulu City & County

The Office of the Prosecuting Attorney (City and County of Honolulu) utilizes Justice Assistance Grants for the Community Prosecution Program and the Drug Court Initiative, programs that assist with both the prevention of crime and the reduction of recidivism rates in this community. Both of these programs have been recognized by the Bureau of Justice Assistance as programs that are effective in addressing the quality of life issues associated with communities and in giving first time drug offenders an alternative to incarceration. The JAG grant funds a prosecutor in each of these areas to spearhead the programs.

The Honolulu Community Prosecution's contributions to the advancement of justice in the community has been nationally recognized with a ***2005 Coordination Honor***

Award (Truancy Sweeps), *2004 Coordination Honor Award* (Weed and Seed Court), *2003 Honorable Mention Award* (Waipahu Juvenile Task Force), and *2000 Judge C. Nils Tavares Award* (for departmental systemic improvements, including community prosecution). In 2007, Honolulu joined forces with other jurisdictions on the *NCJFCJ Methamphetamine Project* in battling the spread of methamphetamine houses across rural America.

The Community Prosecution program remains a key partner in the Methamphetamine Abatement Project sponsored by (NCJFCJ), addressing concerns of the Oahu Neighborhood Boards, participating in the Youth Violence Prevention Initiative of the D.O.E., in accomplishing the mission of the federal Weed and Seed Program, in being a presence around the table to discuss Drug Endangered Children, ensuring the media receives accurate information about Community Prosecution campaigns, presenting the Community Prosecution program to community groups and providing interagency training sessions for other community prosecution partners.

The Justice Assistance Grant funds used in support of the Drug Court assist in the reduction of recidivism rates in the community. Since the inception of Drug Court in 1996, 738 defendants have been served. Of that number, 453 clients have graduated and only 57 have been convicted of new criminal offenses (26 misdemeanors/31 felony convictions). The current recidivism rate is 12.6%.

The loss of Justice Assistance Grant monies would seriously imperil the Office of the Prosecuting Attorney's ability to sustain the successful Community Prosecution program and Drug Court Initiatives.

V. MASSACHUSETTS

In the last four years alone, the Massachusetts District Attorneys and the Massachusetts District Attorneys Association have received more than \$2,500,000 in Byrne-JAG funding for initiatives to promote Internet safety, address drug crimes (heroin, oxycontin, methamphetamine), fund apprehension teams for violent fugitives, address underage drinking, and purchase technology hardware and software to link police and district attorney case management systems.

VI. NEW YORK

King County

The King County District Attorney's Office (KCDA) in New York currently receives five separate Byrne grants totaling approximately \$1.5 million. These funds are used in not only the investigation and prosecution of narcotics and gang-related criminal enterprises, but in the prosecution of domestic violence cases. Additionally, these funds are used for innovative offender reentry programs like the Drug Treatment Alternatives-to-Prison program, the nation's first prosecution-ruin program to divert prison-bound felony offenders to residential drug treatment.

Recently, an investigation funded, in part by a Byrne grant, made national headlines. These funds were instrumental in KCDA's Operation Final Voyage, an investigation that uncovered an international cocaine smuggling operation between Panama and the port of New York using container ships. This operation resulted in the seizure of cocaine with a street value of \$10 million, the indictment of seven Panamanian nationals, and the dismantling of an operation that hoped to supply cocaine to drug dealers throughout the east coast of the United States.

VII. PENNSYLVANIA

The Pennsylvania District Attorneys Institute (PDAI) received \$469,035 in Byrne-JAG funding in FY 2007. Most of this funding is used by the Institute to conduct statewide training of prosecutors and law enforcement personnel. In fact, the PDAI is the only source of accredited in-state training for Pennsylvania's 67 district attorneys. This training is critical to most Pennsylvania counties which are predominantly rural jurisdictions with small prosecutor offices lacking in the necessary resources to provide their own training. While prosecutors could participate in training sponsored by the Pennsylvania Bar Institute, the cost of this training is typically triple that of the PDAI; often geared toward defense counsel; and lacks the prosecutor networking and interactive component that is found in PDAI trainings.

The loss of this funding would devastate PDAI – the Byrne-JAG funding received in FY 2007 covered 50% of payroll, benefits, and overhead for both the PDAI and the Pennsylvania District Attorneys Association. Personnel who work primarily on training courses for the Institute are compensated almost entirely by the Byrne-JAG program. If Byrne-JAG funding is lost or continues to languish, lay-offs and sale of realty would become a necessity. The development of well trained prosecutors and law enforcement personnel will become impossible not only in Pennsylvania but across the nation if these funds continue to be reduced or cut entirely.

VIII. TENNESSEE

Shelby County

A good example of the use of Byrne-JAG funding for prevention purposes is a community outreach program being used in Shelby Count (Memphis). The District Attorney in this county dedicates one staff member (special assistant) to this program

which educates the county school students and citizens about the severe consequences of violent crimes committed with guns and the dangers of both gangs and drugs.

The “Do The Right Thing Challenge” implemented in Memphis City and Shelby County schools is an initiative of the National Campaign to Stop Violence, a non-profit organization, composed of business, community and governmental leaders who have come together to reduce youth violence in communities across America. A reduction in homicides with firearms is in part attributable to the community outreach work done by this special assistant. Additionally, the special assistant is responsible for managing the Mentoring Based Truancy Reduction Program for the District Attorney’s Office. Five Memphis City schools participate in the Mentoring Program. In lieu of prosecuting truant students, the District Attorney’s Office matches qualified mentors with the truant students. The mentoring program has shown success with the mentored students by their increased school attendance and participation in various community activities with their mentors. The lack of funding for this special assistant position would have a drastic effect on the community. Without JAG funding, the truancy program will not have a manager, causing the program to slow or even cease. The strong message from the District Attorney’s Office about the consequences of violent crimes committed with guns, and the dangers of gangs and drugs will unfortunately no longer be communicated to the community.

IX. VIRGINIA

The state of Virginia has received \$58,278 of Byrne-JAG funding annually, which has allowed the implementation of critical training programs for prosecutors, which, otherwise, the state would not have had the resources to fund. This funding has and will

support drug prosecution training for 20 prosecutors and 20 law enforcement officers each year from 2006-2009. The Drug Prosecution program trains prosecutors and law enforcement to work as teams to more efficiently and effectively prosecute narcotics violations. Additionally, Byrne-JAG funding provides the state with the ability to annually train 40 prosecutor and law enforcement officer teams in the latest techniques to prosecute homicide cases. These programs have been met with significant praise by attendees and have been found to provide much needed guidance for prosecutors and law enforcement officers as they work together to ensure Virginia's communities are crime-free.

The loss of Byrne-JAG funding would put a halt to these trainings in Virginia, which have proven so valuable to prosecutors and law enforcement throughout the state, ultimately stifling their ability to ensure public safety in Virginia's communities.

X. WISCONSIN

Anoka County

With Byrne-JAG funding, Anoka County has dedicated a prosecutor to the county drug task force. The county has found that direct interaction between prosecutors and drug task force members, results in successful drug prosecutions which constitute about one third of the county's caseload. The county has received \$49,400 annually in Byrne-JAG funding to finance this task force.

If Byrne-JAG funding is eliminated, there will be less of an emphasis on drug prosecutions and a loss of direct contact with prosecutors during the investigation of drug cases.

CONCLUSION

On behalf of the nation's prosecutors, I would like to thank the Subcommittee for the opportunity to share my views on the Byrne-JAG program and I would urge the Subcommittee to take the necessary steps to ensure the authorization of Edward Byrne Memorial Justice Assistance Grants at the FY 2006 levels (\$1.095 billion) through Fiscal Year 2012.